

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT BROTHERSON, PATRICK	)	
SHEEHY, and CAROLYN BECHTEL,	)	
individually and on behalf of all others	)	No. C07-1787 RAJ
similarly situated,	)	
	)	<b>ORDER PRELIMINARILY</b>
Plaintiffs,	)	<b>APPROVING CLASS ACTION</b>
	)	<b>SETTLEMENT AND NOTICE</b>
v.	)	<b>OF PROPOSED SETTLEMENT</b>
	)	<b>AND SETTLEMENT HEARING,</b>
THE PROFESSIONAL BASKETBALL	)	<b>AND SCHEDULING FINAL</b>
CLUB, L.L.C., an Oklahoma limited liability	)	<b>FAIRNESS HEARING</b>
company registered to do business in the State	)	
of Washington,	)	
	)	
Defendant.	)	
	)	

This matter comes before the Court on the parties' Joint Motion for Preliminary Approval of Class Action Settlement. Dkt. # 195. The parties have agreed, subject to final approval by this Court following notice to the Class, to settle this action upon the terms and conditions set forth in the Settlement Agreement. The Court has reviewed the Settlement Agreement, as well as all files, records, and proceedings to date in this matter.

The court finds that the settlement the parties have proposed is fair, reasonable, and adequate, and thus the court GRANTS their motion for preliminary approval. In order to ensure

1 that class members make informed choices as they decide whether to object to the settlement or  
2 otherwise comment upon it, the court directs class counsel to make several additions to their  
3 electronic and printed notices to class members.

4 First, class counsel shall ensure that the website they maintain at  
5 www.SonicsClassAction.com is updated to reflect the court's preliminary approval of this  
6 settlement. Specifically, the website shall contain this preliminary approval order, the parties'  
7 motion for preliminary approval, and the attachments thereto, including a copy of the notice  
8 mailed to class members. It shall also inform class members that complete records of this  
9 litigation can be accessed online and at the courthouse.

11 In addition, class counsel shall endeavor to ensure that the portion of the website that  
12 allows class members to determine their estimated damages is easily accessible and contains  
13 enough disclosures to permit class members to make a reasonable assessment of their damages.  
14 The court recognizes that the amount each class member will receive depends on the amount of  
15 costs and attorney fees that the court awards, but the website must nonetheless give class  
16 members a basis to calculate damages. For example, the website might give instructions on  
17 estimating a class member's distributions based on a series of assumptions about how much of  
18 the \$1.6 million settlement will be available to class members. Class counsel must make  
19 changes to the website *before* mailing settlement notices to class members. Once they do so,  
20 they shall contact the court so the court can examine the website before notice is mailed. The  
21 court prefers that they do so no later than February 25, 2010, or else they risk forcing a delay of  
22 other deadlines stated in this order.

25 Second, class counsel shall revise their proposed notice to class members at sections 4  
26 and 6 to reflect the improvements they make on the website to permit class members to estimate

1 their damage awards. It shall also revise the section addressing attorney's fees and costs to  
2 plainly state the following: (1) that while counsel may seek an attorney fee award up to one-  
3 third of the settlement amount, the court has in no way indicated that it will award that amount;  
4 (2) an estimate (or preferably, an upper limit) of costs that class counsel will seek; and (3) that  
5 any amount awarded as attorney fees or costs will reduce the \$1.6 million available to class  
6 members.  
7

8 Finally, the court sets the final approval hearing for April 29, 2010 at 2:00 p.m. The  
9 court sets this deadline with the expectation that class counsel will make the website and notice  
10 revisions ordered above, and send notice to class members such that they have at least 45 days  
11 from the mailing of the notice until the final approval hearing. Counsel will revise the class  
12 notice and website to state the appropriate dates for objections and other submissions in light of  
13 the hearing date above. Counsel shall provide the court with a copy of the revised notice for  
14 approval by February 25, 2010.  
15

16 The remainder of this order reproduces the parties' proposed preliminary approval order,  
17 except that the court has inserted dates where appropriate, has added a clause to the end of  
18 paragraph 3, and has changed the deadline for submitting objections to 14 days before the final  
19 hearing, and has added an instruction to class members not to send their objections to the court.  
20

21 IT IS HEREBY ORDERED:

22 1. **Preliminary Approval of Proposed Settlement.** The Settlement Agreement is  
23 preliminarily approved as fair, reasonable and adequate. The Court also finds that notice to  
24 members of the Class should be provided and a hearing on the Settlement Agreement should be  
25 held as set forth in this Order.  
26

1           2.     **Stay of Proceedings.** All proceedings in this action are hereby stayed and  
2 suspended until further order of the Court, except such actions as may be necessary to implement  
3 the Settlement Agreement and this Order.

4           3.     **Settlement Hearing.** A final approval hearing (the “Settlement Hearing” or  
5 “final hearing”) shall be held before this Court on April 29, 2010, at 2:00 to determine whether  
6 the Settlement Agreement is fair, reasonable and adequate and should be approved. The  
7 Settlement Hearing may be postponed, adjourned, or continued by order of the Court without  
8 further notice to the Class. After the Settlement Hearing, the Court may enter the Final Approval  
9 Order And Judgment (Exhibit 3 to the Settlement Agreement) that will adjudicate the rights of  
10 the Class members, or it may modify that order after hearing objections and other input from  
11 class members.

12           4.     **Notice.** No later than twenty (20) days after the date of this Order, Class Counsel  
13 shall have a copy of the Notice of Proposed Settlement and Settlement Hearing in substantially  
14 the same form as Exhibit 2 of the Settlement Agreement mailed by First Class Mail, Postage  
15 Prepaid, to all members of the Class. Class Counsel will use the list of names and addresses of  
16 all members of the Class previously provide by Defendant in electronic form.

17           5.     **Findings Concerning Notice.** The Court finds that this notice is the best  
18 practicable notice under the circumstances and is as likely as any other form of notice, to apprise  
19 class members of the Settlement Agreement, and their rights to object. The Court further finds  
20 that the notice is reasonable, that it constitutes adequate and sufficient notice to all persons  
21 entitled to receive notice, and that it meets the requirements of Due Process.

22           6.     **Papers in Support of Settlement.** The parties to the Agreement may file  
23 additional papers in support of the proposed settlement seven (7) calendar days prior to the final  
24 hearing.  
25  
26

1                   7.       **Objections and Appearances**

2                   (a)       **Written Objections.** Any Class member may object to the fairness,  
3                   reasonableness or adequacy of the Agreement. Class members may do so either on their  
4                   own or through counsel hired at their own expense. Any Class member who wishes to  
5                   make a written objection to the Settlement Agreement must serve a written statement of  
6                   objection along with any other supporting materials, papers or briefs that he or she wishes  
7                   the Court to consider no later than fourteen (14) days before the Settlement Hearing and  
8                   must on that same date serve such papers by first class mail on:  
9

10                               Mark A. Griffin  
11                               Keller Rohrback L.L.P.  
12                               1201 Third Avenue, Suite 3200  
13                               Seattle, WA 98101-3052

14                               and

15                               John Tondini  
16                               Byrnes & Keller, L.L.P.  
17                               1000 Second Avenue, Suite 3800  
18                               Seattle, WA 98104

19                   Any such objections will be filed with the Court by Class Counsel no later than seven (7)  
20                   days before the Settlement Hearing so the Court may consider them. CLASS  
21                   MEMBERS SHOULD NOT SEND OBJECTIONS DIRECTLY TO THE COURT.

22                   (b)       **Appearance at Settlement Hearing.** Any Class member who has served  
23                   an objection may appear at the Settlement Hearing, either in person or through counsel  
24                   hired at the Class member's expense, and object to the fairness, reasonableness or  
25                   adequacy of the Settlement Agreement. Any Class Member who chooses to be heard  
26                   must send a written notice of intent to appear on Class Counsel at the address listed above  
                     by the same date that objections are due.

8. **Effect of Failure to Approve the Settlement Agreement.** In the event the Court or any other court (a) disapproves, sets aside, or modifies this Agreement, (b) declines for any reason to enter or give effect to a Preliminary Approval Order, (c) declines for any reason to enter or give effect to an Final Approval Order And Judgment, (d) holds that the Final Approval Order And Judgment, or any judgment entered pursuant thereto, should in any material part be overturned or modified in any material way, or (e) the approval order is appealed, and defendant exercises its right to declare the settlement void, then the Settlement Agreement shall become null and void, the Action shall be deemed to revert to its status as of the date and time immediately prior to the execution of the Memorandum of Understanding, and the parties shall jointly move that any and all orders entered pursuant to the Agreement be vacated and shall proceed with the Action as if the Memorandum of Understanding and the Agreement had never been executed; provided, however, that in the event that the parties, within fifteen (15) days of any such action of any court, jointly elect to appeal from or otherwise seek review or reconsideration of such court action, the Agreement shall not be deemed null and void until such time as such court action becomes final after any proceedings arising directly or indirectly from the parties' appeal(s) or other attempt(s) to have such court action reversed, withdrawn, or overturned. IT IS SO ORDERED.

DATED: February 12, 2010.

Richard A. Jones

The Honorable Richard A. Jones  
United States District Judge